State furnishing teachers for the general instructional programs of the nonpublic schools. This argument—without a line of record support—is adequately dealt with in the District Court's opinion (Jurisdictional Statement at 37a). However, appellant's reliance on *Lemon v. Kurtzman*, 403 U.S. 602 (1971), as supporting their view that the Auxiliary Service program is invalid does warrant a brief rebuttal. The very essence of the *Lemon* decision was the recognition that the State could not adequately insure that parochial school teachers were not inculcating religion unless the State had a comprehensive system of surveillance which would violate the entanglement principle of the Establishment Clause:

> ". . . The teacher is employed by a religious organization, subject to the direction and discipline of religious authorities, and works in a system dedicated to rearing children in a particular faith. These controls are not lessened by the fact that most of the lay teachers are of the Catholic faith. . . .
>
> ". . . We simply recognize that a dedicated religious person, teaching in a school affiliated with his or her faith and operated to inculcate its tenets, will inevitably experience great difficulty in remaining religiously neutral. . . ." *Id.* at 618.

Act No. 194, on the other hand, is administered by public employees only. Moreover, in the hiring of those public employees, the State is bound by the mandate of Pa. Stat. tit. 24, Section 1-108:

> "No religious or political test or qualification shall be required of any director, visitor, superintendent, teacher, or other officer, appointee, or employe in the public schools of this Commonwealth."

The surveillance requirement found necessary in *Lemon* to protect against the deliberate or unintentional inculcation of religion by teachers in the employ of religious schools is obviated entirely by the simple fact that public employees—and only public employees—administer Act 195:

> "The notion that by setting foot inside a sectarian school a professional therapist or counsellor will succumb to sectarianization of his or her professional work is not supported by any evidence" (Majority Opinion, Jurisdictional Statement at 39a.)

The District Court's Opinion has so fully and adequately dealt with the challenges raised against Act 194 as to render those challenges unsubstantial and a further review of them by this Court unnecessary.

Textbooks:

Appellants' challenge to the textbook provision of Act 195 is, of course, nothing more than an attempt to relitigate this Court's decision of six years ago in *Board of Education v. Allen,* 392 U.S. 236 (1968). That recent decision must control, as the District Court correctly concluded. Appellants' attempts to distinguish *Allen* are unavailing.

Instructional Materials:

Appellant challenges the constitutionality of the Instructional Materials provision of Act 195 because, they say, it goes beyond the permissible bounds of *Allen.* The materials countenanced by the Guidelines to Act 195 are indistinguishable from textbooks as teaching tools. Their self-policing characteristics are apparent.

This Court only recently observed in reaffirming the principles of the *Allen* decision that "a textbook's content is ascertainable . . ." *Lemon v. Kurtzman,* 403 U.S. 602, 617 (1971). The same is equally true of the instructional materials authorized to be loaned pursuant to Act 195. Majority Opinion, Jurisdictional Statement at 45a.

Instructional Equipment:

The instructional equipment which may be loaned pursuant to Act 195, limited as it is to equipment which "from its nature cannot be readily diverted to religious purposes" (Final Order, Jurisdictional Statement at 102a-103a) does not infringe upon the Establishment Clause. Moreover, the District Court's Opinion, distinguishing between such self-policing equipment and equipment which can be diverted to religious purposes, and finding the former permissible and the latter impermissible follows closley the course this Court followed in *Tilton v. Richardson,* 403 U.S. 672, 682-84 (1971).

The equipment which can now be loaned pursuant to the Act is self-policing by any reasonable standard. The examples hypotheticated by appellants (Jurisdictional Statement at 15) of the manner in which this equipment can be put to a religious use border on the fantastic. Moreover, they suggest a conscious design to violate the law which is unsupported by the record:

> "A possibility always exists, of course, that the legitimate objectives of any law or legislative program may be subverted by conscious design or lax enforcement. But judicial concern about these possibilities cannot, standing alone, warrant striking

down a statute as unconstitutional." *Tilton v. Richardson,* supra, 403 U.S. at 679.

The District Court properly concluded that the loan of such equipment, self-limiting in nature, does not infringe upon the Establishment Clause.

CONCLUSION

Appellees respectfully submit that the questions upon which this cause depend are so unsubstantial as not to need further argument, and appellees respectfully move the Court to dismiss this appeal or, in the alternative, to affirm the judgment entered in the cause by the United States District Court.

Respectfully submitted,

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